

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION**

ALBERT SMITH,

Plaintiff

v.

LORING GRAY, KENNETH B.
HODGES, III, and GREGORY W.
EDWARDS,

Defendants

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1:04-CV-118 (WLS)

ORDER

Before the Court is a Report and Recommendation from United States Magistrate Judge Richard L. Hodge (Doc. 33), filed on February 2, 2007. It is recommended that Defendants' Motion for Summary Judgment (Doc. 28) be granted. Plaintiff filed a timely objection to the Recommendation on February 26, 2007. (Doc. 35).

It was noted in the Recommendation that Plaintiff filed this action raising allegations of malicious prosecution, denial of access to attorney, and deprivation of mail and telephone privileges while confined at the Dougherty County Jail awaiting trial on murder charges. (Doc. 33). Upon review of the parties' submissions, it was found that Defendants adequately established that the telephone and visitation restrictions in place during the time period in question were issued in order to keep Plaintiff and his co-defendant separated during their respective trials, which was done in order to ensure the integrity of the judicial process. *Id.* It was further found that this "legitimate penological purpose...removed the restrictions [at issue] from the realm of punishment." *Id.* Furthermore, it was found that Plaintiff failed to overcome Defendants' showing that they in no way restricted Plaintiff's access to an attorney. Lastly, it was found that Plaintiff did not testify at his co-defendant's trial, thereby rendering moot any claim Plaintiff may seek to maintain that he was prevented from having representation during his co-defendant's trial. *Id.* In his objection, Plaintiff reasserts facts and arguments made in

response to Defendants' Motion; the same which were adequately reviewed and addressed by the Magistrate Judge in his Recommendation. (Docs. 30, 35). Accordingly, Plaintiff's objections are **OVERRULED**.

Upon full review and consideration upon the record, the Court finds that the Report and Recommendation (Doc. 33) should be, and hereby is, **ACCEPTED, ADOPTED** and made the Order of this Court for reason of the findings made and reasons stated therein together with the findings made and the conclusions reached herein. Accordingly, Defendants' Motion for Summary Judgment (Doc. 28) is **GRANTED**. .

SO ORDERED, this 21st day of March, 2007.

/s/W. Louis Sands
THE HONORABLE W. LOUIS SANDS,
UNITED STATES DISTRICT COURT